IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.651 OF 2001

Kamgar Utkarsha Sabha)
A Trade Union registered under the)
Trade Unions Act having its office)
at Rama Gulab Joshi Nivas)
Parleshwar Road, Vile Parle)
Mumbai 400 057.).. PETITIONER

VERSUS

1) Bhartiya Kamgar Karmachari Mahasangh)
A Trade Union registered under the)
Trade Unions Act, 1926 having its)
office at 5, Navelkar Lane, Near)
Prarthana Samaj, Mumbai 400 004.)

2) M.I.R.C. Electronics Limited)
Kodus Village, Bhiwandi-Wada Road)
Taluka Wada, Dist. Thane.)

3) Shri A.U.Purandhare, Member)
Industrial Court, Thane having his)
office at Meher Radar, Road No.2)
Wagle Industrial Estate, Thane.).. RESPONDENTS

Mr.K.S. Bapat for the Petitioner.

Mr.G.S. Baj for Respondent No.1.

Mr.P.N. Salgaonkar for Respondent No.2.

CORAM: V.G. PALSHIKAR AND
SMT.NISHITA MHATRE, JJ.

DATED: 2ND FEBRUARY 2005

ORAL JUDGMENT : (PER MHATRE, J.)

. This Petition challenges an order dated 22nd November 2000 of the Industrial Court, Thane in Application (MRTU) No.4 of 2000 passed on an application

under Section 14 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). The Industrial Court framed a preliminary issue regarding the maintainability of the application filed by the Applicant Union i.e. Respondent No.1 herein against the non-applicant Union i.e. the Petitioner Union herein. The Industrial Court found that the application was maintainable. The contention of the Petitioner, that once an application filed under Section 14 was disposed of for any reason whatsoever, the Industrial Court could not entertain fresh application made by that Union for recognition in place of the already recognised Union, unless a period of one year had elapsed since the disposal of the previous application of that Union, was rejected.

2. The Petition has arisen in the following manner:

. The Petitioner is a Trade Union recognised under the Act for the undertaking of Respondent No.2. It obtained recognition in the year 1997. Respondent No.1, another Trade Union functioning in Respondent No.2, filed an application under Section 14 of the Act, being Application (MRTU) No.4 of 1999, for de-recognition of the Petitioner Union and for recognition in its place, within two years of the Petitioner Union being

recognised. A preliminary objection was raised by the Petitioner Union to the maintainability of the application since under Section 14 an application for de-recognition of a Union and recognition in place of the earlier Union cannot be filed within a period of two years after the non-applicant Union is granted recognition. On 25th April 2000, this application was disposed of for non-prosecution on the Respondent No.1 Union filing a purshis to withdraw the application filed by it under Section 14 of the Act.

3. A fresh application being Application (MRTU) No.4 of 2000, was filed by Respondent No.1 Union under Section 14 of the Act. The Petitioner Union raised an objection to the maintainability of this application by contending that the earlier application had been disposed of for non-prosecution on 25th April 2000 and immediately on the next day Respondent No.1 had filed the fresh application under Section 14 of the Act. According to the Petitioner Union, such an application could be filed only after one year of the earlier application being disposed of.

4. The Industrial Court has rejected the contentions of the Petitioner Union and held that the fresh application was maintainable as the earlier application had not been disposed of on merits. Being

aggrieved by this order, the Petitioner Union has preferred the present Petition under Article 226 of the Constitution of India.

5. Mr.Bapat appearing for the Petitioner Union submits that once an application filed under Section 14 of the Act is disposed of, the Industrial Court cannot entertain any application preferred by the Union for recognition in place of a recognised Union unless a period of one year has elapsed since the date of disposal of the previous application. He contends that the word "disposal" contained in the proviso to Section 14 must be read to mean disposal for any reason and need not necessarily be disposal on merits. He submits that the Legislation has given an enlarged meaning to the word "disposal" which cannot be restricted to mean "disposal on merits" as this would cause several trade unions to mushroom in the company. He submits that one of the objects of the Act is to curb the growth of several trade unions in an undertaking.

6. Sub-section (1) of Section 14 and its proviso read as follows :

> "14. **Recognition of other union** :- (1) If any union makes an application to the Industrial Court for being registered as a recognised union in place of a recognised union already

> registered as such (hereinafter in this section referred to as the "recognised union") for an undertaking, on the ground that it has the largest membership of employees employed in such undertaking, the Industrial Court shall, if a period of two years has elapsed since the date of registration of the recognised union, call upon the recognised union by a notice in writing to show cause, within thirty days of the receipt of such notice, as to why the union now applying should not be recognised in its place. An application made under this sub-section shall be accompanied by such fee not exceeding rupees five as may be prescribed.
>
> . Provided that, the Industrial Court may not entertain any application for registration of a union, unless a period of one year has elapsed since the date of disposal of the previous application of that union."

The Section stipulates that an application can be filed for de-recognition of a trade union and for recognition of another trade union in its place provided two years have elapsed since the non-applicant union had obtained recognition. A notice is expected to be issued to the recognised union to show cause as to why another union should not be recognised in its place, after the Industrial Court on preliminary scrutiny finds that there is some substance in the application made. If, on an inquiry, the Industrial Court comes to the conclusion that the recognised union has lost the requisite membership under Section 11 of the Act or that the applicant union has a larger membership than the recognised union, it can, subject to the provisions of Section 12 of the Act, recognise the union applying for

recognition in place of the earlier union. However, such an application cannot be entertained by the Industrial Court unless two years have elapsed since the granting of recognition to a union. If the Industrial Court comes to the conclusion that the application is not maintainable either because two years have not elapsed or because the Union applying for recognition does not have the 30% membership as required under Section 11 of the Act for the period of six months prior to the making of the application, the application can be dismissed. An application which is dismissed because it is not maintainable, cannot be considered to be disposed of on merits. The proviso to Section 14(1) must be read to mean that disposal has to be on merits and not because a union withdrew the application or the application filed under Section 14 is not prosecuted. The bar of filing of another application for a period of one year from the disposal of the previous application cannot apply to such disposals. If Section 14 is to be given its true meaning, it would be necessary to interpret the word "disposal" used in the proviso to mean "disposal on merits". Placing any other interpretation on this word would, in our opinion, do violence to the Section. It could not have been the Legislative intent to use the word "disposal" to include disposal for any reason and, therefore, in our opinion, it would have to be restricted to disposal on merits.

7. When the first application filed by a Union under Section 14 is disposed of on merits, a fresh application by the same Union is not maintainable within a period of one year. This would allow the recognised union to function in the concern without a threat from that unrecognised union, at least for a period of one year after the first application was dismissed. However, this would not prevent a third trade union functioning in the undertaking from staking its claim for recognition under Section 14 within a period of one year after the earlier application under Section 14 had been disposed of on merits. This obviously would hinder complacency creeping in into the functioning of the recognised union. The submission of Mr.Bapat that the interpretation that we are placing on the word "disposal", would lead to mushrooming of trade unions in an undertaking is baseless. In fact if the word disposal contained in the proviso is construed to mean disposal for any reason whatsoever, it would lead to disastrous results. A trade union would then be permitted to function and claim that it represents the workmen, although it has no membership, for an additional period of one year, merely because the application under Section 14 was disposed of without touching the merits of the case. The object of the Act being to promote or facilitate collective bargaining

would then get frustrated.

8. In the instant case, the first application for de-recognition was made before two years had elapsed since the Petitioner obtained its recognition. Obviously, therefore, an application under Section 14(1) was not maintainable as the two year period had not been completed. Respondent No.1 Union did not prosecute this application and, therefore, it could not be termed as a "disposal on merits". The proviso would apply only when the earlier application has been disposed of on merits, which, in the present case, was disposed of on account of non-prosecution. In our opinion, therefore, the Industrial Court was perfectly justified in taking the view that since the earlier application was withdrawn, the second application being Application (MRTU) No.4 of 2000 filed by the Respondent No.1 was maintainable.

8. Writ Petition dismissed. Rule discharged. No order as to costs.

(V.G.PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)